

AGREEMENT

THIS AGREEMENT, made this 1st day of Sept, 2006 by and between the MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation organized under the laws of Maryland, hereinafter referred to as the "CITY", and SEGAL ADVISORS, INC. hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the City desires a contractor to provide Pension Fund Investment Performance Evaluation and Consulting Services; and

WHEREAS, the City desires to employ the services of the Contractor to perform said services in connection with the aforementioned service under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the covenants and promises set forth, the parties hereto agree as follows:

1. **SCOPE OF WORK.** The Contractor agrees to perform the work described and be bound by the terms and conditions set forth in Exhibit A; RFP#29-06, Pension Fund Investment Performance Evaluation and Consulting Services, and in Exhibit B; Segal Advisors, Inc. proposal dated January 20, 2006, attached hereto as a part hereof. In the event any term of the attached exhibits conflicts with this Agreement, this Agreement shall prevail. The Contractor shall perform the services described in this Agreement (a) in a timely, diligent and professional manner in accordance with recognized standards of the applicable industry or profession and, (b) in accordance with the time periods set forth in this Agreement and in the schedule and sequencing specified by the City. Contractor shall furnish efficient business administration and superintendence and shall use its best efforts to insure that such services being performed under this Agreement are completed in the best way and in the most expeditious and economical manner consistent with the City's best interests.

2. **REVIEW BY CITY.** The Contractor agrees that the work and records covered by this Agreement will be subject to review, at all times, by representatives of the City.

3. **DOCUMENTS, ETC.** All finished or unfinished documents, data, studies, surveys, drawings, CADD drawings, maps, models, photographs, letters and reports prepared by the Contractor or his subcontractors shall become the property of the City.

4. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Contractor agrees that he will comply with all applicable federal, state and local laws relating to discrimination in employment.

5. **INDEMNIFICATION.** The Contractor agrees to indemnify and save harmless the City against any liability, claim, demand for personal injury or property damage, and other expenses or losses suffered or arising out of or caused by any negligent act or omission of the Contractor, its subcontractors, servants, agents or employees incurred in the performance of the Agreement.

6. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement for convenience by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. If the Agreement is terminated by the City as provided in this Section the Contractor will be paid on a pro-rata basis for work performed.

7. **TIME OF ESSENCE.** The term of this Agreement is for a period of five (5) years with the option to renew for two (2) additional one-year periods subject to annual review of the Director of Finance. The Consultant acknowledges that time is of the essence in providing the services under this Agreement and agrees to assign adequate personnel sufficient to respond to requests for service.

8. **TERMINATION FOR CAUSE.** If through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligation under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of the Notice Period. Such termination for cause shall only become effective if the Contractor has failed to remedy the circumstances alleged to constitute cause prior to the expiration of the Notice Period. If the Agreement is terminated by the City, as provided in this section, the Contractor will be paid an amount based on the number of hours actually worked at the hourly rates set forth herein, or if no hourly rate is set forth, Contractor shall be paid on a pro-rata basis for work performed. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments due the Contractor up to the full amount of the Contractor's fee, until such a time as the exact amount of damages due the City from the Contractor is determined by any Court of Competent Jurisdiction.

9. **COMPLIANCE WITH LAWS.** The Contractor shall observe and comply with federal, state, county and local laws, ordinances and regulations that affect the work to be done herein, and shall indemnify and hold the City harmless, and all of its officers, agents and servants against any claim or liability from or based on the violation of any such law, ordinance or regulation, whether by the Contractor or the Contractor's agent. Notwithstanding the foregoing, in the event that the Contractor determines that a conflict exists between any applicable law, ordinance and/or regulation, the Contractor will so advise the City and the City will decide which law, ordinance and/or regulation shall be followed.

10. **SUBCONTRACTS.** None of the services covered by this Agreement, shall be subcontracted without the prior written consent of the City. The Contractor will require all subcontractors to have in effect at all times insurance coverage for negligent acts, errors and omissions of subcontractors and their employees and the City shall be named as an insured party.

11. **ASSIGNMENT.** The Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the City.

12. INSURANCE. The Contractor shall carry insurance with limits as outlined under the attached Insurance Requirement document and shall provide to the City a certificate evidencing the same.

13. CONFLICTS OF INTEREST. The Contractor covenants that it has presently no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

14. DISPUTES. Except as otherwise provided in this agreement, any dispute concerning a question of fact arising out of this agreement which is not disposed of by agreement, shall be decided in accordance with Section 17-174 of the City's Purchasing Ordinance as set forth in Chapter 17 of the Rockville City Code.

15. GOVERNING LAW. This agreement is executed in the State of Maryland and shall be governed by Maryland law. The Contractor, by execution of this Agreement, consents to the jurisdiction of the Maryland state courts with respect to any dispute arising out of this agreement and further consents to venue in Montgomery County, Maryland.

16. SUCCESSORS AND ASSIGNS: This Agreement shall be binding and inure to the benefit of all successors and assigns of the parties hereto. Notwithstanding the foregoing, this Agreement shall be considered a personal services contract and the Contractor shall not assign any right or obligation under this Agreement without the City's express written consent which may be withheld in the City's sole and absolute discretion.

17. INDEPENDENT CONTRACTOR. The Contractor shall perform this Agreement as an independent contractor and shall not be considered an agent of the City, nor shall any of the Contractor's employees or agents be subagents of the City.

18. PAYMENT TERMS. Compensation shall be made by the City to the Contractor on a quarterly basis. The fee for the work to be performed hereunder as set forth in the attached Exhibit B is in the annual lump sum amount of Sixty-Five Thousand Dollars (\$65,000). In the event the labor hours and expenses exceed this amount the Contractor shall complete the task with no additional compensation. Meetings requested by the City of Rockville over and above those included in the lump sum bid shall be paid at the rate of \$275/hour.

19. INVOICING. Requisitions for payment shall include a complete description of the services rendered, personnel, hourly rates, hours and date of services. All requisitions shall be submitted to the Mr. Gavin Cohen, Director of Finance, City of Rockville, 111 Maryland Avenue, Rockville, MD 20850.

20. MODIFICATION. This agreement may be modified only by written instrument signed by both parties hereto.

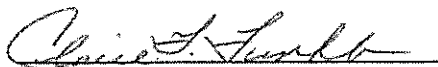
21. ENTIRE AGREEMENT. This agreement, including the exhibits attached hereto, constitutes the entire agreement between the City and the Contractor, and the

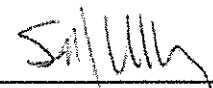
parties shall not be bound by any prior negotiation, representations or promises, not contained herein.

IN WITNESS WHEREOF, the parties have set their hands and seals hereto on the date written above.

ATTEST

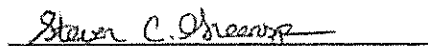
THE MAYOR AND COUNCIL OF
ROCKVILLE



Claire Funkhouser, City Clerk

By: 
Scott Ullery, City Manager


ATTEST

SEGAL ADVISORS, INC.


Steven C. Greenspan

By: 
Name: GEORGE KIRIRAS
Title: VICE PRESIDENT

Approved as to form and legality:


David R. Podolsky, Assistant City Attorney



**CITY OF ROCKVILLE
MARYLAND
GENERAL CONDITIONS AND
INSTRUCTIONS TO BIDDERS
(PROPOSAL 4/04)**

1. **PREPARATION** All bids are to be submitted in a sealed envelope to the Purchasing Office marked with the bid number.

Conditional bids and bids containing escalator clauses will not be accepted. Bids must contain an original signature, in the space provided, of an individual authorized to bind the bidder.

2. **LATE BIDS** It is the bidder's responsibility to assure delivery of the bid at the proper time to the designated location. Bids delivered to any other office or location will not be considered.

3. **BID AWARD** The award will be made to the offeror whose proposal, in the opinion of the City is the best taking into consideration all aspects of the offeror's responses, including total net cost to the City. In the event that the offeror to whom the award is made does not execute a contract within 15 days from receipt of the contract, the City may give notice to such offeror of intent to award the contract to the next most qualified offeror, or to call for new proposals.

4. **ADDENDA** All addenda issued after the Request for Quotations and before the due date of the quotation shall become part of the contract. Bidders are required to acknowledge the addenda by one of the following methods; it is the responsibility of the vendor to make inquiry as to addenda issued:

- Return a copy of the addenda with the bid
- Initial in person at City Hall receipt of the addenda

5. **ACCEPTANCE/REJECTION OF BIDS** The City reserves the right to reject any or all bids in part or full and to waive any technicalities or informalities as may best serve the interests of the City. The City will accept or reject bids within one hundred and twenty (120) days after the bid due date. Bids may not be withdrawn during that period.

6. **MULTI-YEAR BIDS** Multi-year contracts may be continued each fiscal year only after funding appropriations have been granted. In the event necessary funding appropriation is not granted, the multi year contract shall be null and void, effective July 1st of the affected year.

7. **ERRORS IN BIDS** When an error is made in extending total prices the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices or in preparation of

bid will not relieve the bidder from performing the contract.

8. **BID WITHDRAWAL** Requests for withdrawal of bids prior to bid opening shall be transmitted to the contract officer in writing.

9. **MISTAKES** Bidders are expected to be thoroughly familiar with all bid documents, including all addenda. No consideration will be granted for any alleged misunderstanding of the intent of the specifications. Each bidder shall carefully and thoroughly examine these bid documents for completeness. No claim of any bidder will be allowed on the basis that these bid documents are incomplete.

10. **INTEREST IN MORE THAN ONE BID AND COLLUSION** Multiple bids received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for a solicitation both as a bidder and as a subcontractor for another bidder, will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

11. **TERMS AND CONDITIONS** The terms and conditions of this document govern in event of conflict with any terms of the bidder's proposal, and are not subject to change by reasons of written or verbal statement by the contractor unless accepted in writing. Words and abbreviations which have well known technical or trade meanings are used in accordance with such meanings.

12. **EXECUTION OF CONTRACT** The Contractor shall be required to execute a formal agreement with the City within fifteen days from the award. A sample of the agreement is attached.

13. **PRINCIPAL PERSONNEL** Principal or key personnel included in the proposal may not be substituted without written approval of the City of Rockville. Replacements for key personnel under the contract must have equivalent professional qualifications and experience as those individuals listed in the proposal. The Consultant must submit written professional qualifications and experience for approval within ten working days prior to replacement.

14. **PRICE ADJUSTMENTS (CPI)** Unless otherwise stated in the bid document, rates quoted are to be

firm for two (2) years after award of a contract. These rates will apply to additional work, change orders and contract modifications. A request for price adjustment after the 2 year period is subject to approval or rejection by the Contract Officer. The Consultant shall submit to the Contract Officer sufficient justification to support the Consultant's request.

A request for price adjustment may not be approved which exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately prior to the date of the request.

15. **INTERPRETATION** Any questions concerning conditions and specification shall be directed in writing to the Purchasing Office. The submission of a bid shall be prima facie evidence that bidder thoroughly understands the terms of the specification. The contractor shall take no advantage of any error or omission in the specifications.
16. **DELIVERY** All time limits stated in the contract documents are of the essence. The contractor shall expedite the work and achieve substantial completion within the contract time. If time limits are not specified, state the number of days required to make delivery/completion in the space provided. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the contractor, notwithstanding that such materials/workmanship have been previously overlooked and accepted.
17. **PAYMENT** Payment will be made monthly upon receipt of an accepted invoice for work done which is reasonable and allocable to the Agreement and which has been performed to the satisfaction of the City.

Invoices should be submitted in duplicate to:
City of Rockville
Attn: Accounts Payable
111 Maryland Avenue
Rockville, Maryland 20850

All invoices must reference a Purchase Order Number.

Payment will be made upon acceptable inspection and/or testing of all items for compliance with specifications and in satisfactory condition. Should inspection delays occur, the contractor shall have thereby no claim for damages or extra compensation. Discounts shall be applicable from the date of acceptance of the materials rather than the date of the invoice.

18. **DELAYS/EXTENSION OF TIME** If the contractor is delayed in the delivery of the supplies, equipment or services by any act or neglect of the City or by a separate contractor employed by the City, or by any changes, strikes, lockouts, fires, unusual delays in transportation or delay authorized by the City, the City shall review the cause of such delay and shall make an extension if warranted.

All claims for extensions must be a written notice sent to the Contract Officer within ten (10) calendar

days after the date when such alleged cause for extension of time occurred. All such claims shall state specifically the amount of the delay the contractor believes to have suffered. If statement is not received within the prescribed time the claim shall be forfeited and invalidated.

19. **TERMINATION FOR DEFAULT** The contract may be cancelled or annulled by the City in whole or in part by written notice of default to the Contractor upon nonperformance or violation of contract terms and an award made to next low Bidder, or, articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Contractor (or his surety) shall be liable to the City for costs to the City in excess of the defaulted contract prices; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
20. **TERMINATION FOR CONVENIENCE** The performance of work or services under this contract may be terminated in whole or part, upon thirty (30) calendar days written notice when the City determines that such termination is in its best interest. The City shall be liable only for those goods and services furnished prior to the effective date of such termination.
21. **CHANGES** The City, without invalidating the contract, may order written changes in the work consisting of additions, deletions or modification with the contract sum and time being adjusted accordingly. All such changes shall be made in writing by the Contract Officer

Costs shall be limited to the following: cost of materials, cost of labor and additional costs of supervision and field office personnel directly attributable to the change.

The cost or credit to the City from a change in the work shall be determined by mutual agreement. The contractor shall do all work that may be required to complete the work contemplated at the unit prices or lump sum to be agreed upon.

No alterations or variables in the terms of the contract shall be valid or binding upon the City unless made in writing and signed by the City.

22. **EXTRA COSTS** If the contractor claims that any instructions by drawings or otherwise involve extra cost or extension of time, a written request must be submitted to the Project Manager within ten (10) calendar days after receipt of such instructions and before proceeding to execute the work, stating in detail the basis for objection. No such claim will be considered unless so made.

Any discrepancies which may be discovered between actual conditions and those represented by the specifications and/or drawings shall be reported to the City and work shall not proceed, until written instruction has been received by the contractor from the City. On drawings the figured dimensions shall govern in the case of discrepancy between the scales and figures.

Anything shown on applicable plans and not mentioned in the specifications or mentioned in the specifications and not shown on the plans have the same effect as if shown or mentioned respectively on both.

23. **GUARANTEE** All guarantees and warranties required shall be furnished by the contractor and shall be delivered to the Contract Manager before final payment is made.

The contractor guarantees that the items conform to the design and specifications and to drawings, samples or other descriptions referred to in this document. The contractor further guarantees the items will be free from defects in materials and workmanship, latent or patent and are suitable for the intended purpose as far as the contractor knows or has reason to know.

24. **DEFECTIVE SUPPLIES/SERVICE** Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the contractor.

If the work shall be found to be defective or to have been damaged, before final acceptance, the contractor shall make good such defect in a manner satisfactory to the City, without extra compensation.

25. **LEGAL REQUIREMENTS** All materials, equipment, supplies and services shall conform to applicable Federal and State laws and regulations. The contractor shall observe and comply with all Federal, State, County and local laws and ordinances that affect the work to be done. The provisions of this contract shall be governed by the law of the State of Maryland.

26. **SUBCONTRACTING** When allowed, bidders who intend to subcontract any portion of the work including delivery, installation or maintenance will submit to the City prior to the start of work: 1) a description of the items to be subcontracted, 2) all subcontractor names, addresses and telephone numbers and 3) the nature and extent of the work utilized during the life of the contract.

This does not relieve the contractor from the prime responsibility of full and complete performance under the contract. There shall be no contractual relationship between the City and any subcontractor.

27. **RESERVATIONS** The City reserves the right to add or delete any item(s) from the bid in whole or in part at the City's discretion without affecting the bid prices for any item or remaining work. Unit prices submitted in the bid shall not be increased or decreased regardless of changes in quantity.

The City may waive minor differences in specifications in bids provided these differences do not violate the specifications' intent nor materially affect the operation for which the items are being purchased.

28. **AUTHORITY OF THE CITY MANAGER IN DISPUTES** Except as may otherwise be provided by the final agreement, any dispute concerning a question of fact arising under the agreement signed by the City and the contractor which is not disposed

of by the final agreement shall be decided by the City Manager who shall notify the contractor in writing of his determination. The contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim. Pending final decision of the dispute herein, the contractor shall proceed diligently with performance under the agreement signed by the City and the contractor. The decision of the City Manager shall be final and conclusive unless an appeal is taken pursuant to City Purchasing Ordinance.

29. **INDEMNIFICATION OF THE COUNCIL** The contractor shall indemnify and save harmless the Mayor and Council from all suits, actions and damages or costs, of every name and description to which the Council may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on part of the contractor, or subcontractors or agents of the contractor.

30. **NO LIMITATION OF LIABILITY** The mention of any specific duty or liability of the contractor in any part of the of specification shall not be construed as a limitation or restriction upon any general liability or duty imposed upon the contractor.

31. **PROPRIETARY INFORMATION** The City agrees, to the extent permitted by law, to hold all material and information belonging to the offeror, which it deems to be confidential, in strictest confidence. The Contractor agrees to hold all material and information belonging to the City or the City's agents in strictest confidence and not to make use thereof other than for the performance of contractual obligations, to release it only to employees requiring such information. Reasonable precautions will be exercised for the protection of any proprietary data included in the proposal.

32. **RELEASE OF INFORMATION** During the term of the final agreement, the successful Contractor shall not release any information related to the services or the performance of the services under the agreement nor publish any final reports or documents without the prior written approval of the City.

33. **PATENTS AND ROYALTIES** Whenever any article, material, appliance, process composition, means or things called for by these specifications is covered by Letter of Patent, the successful bidder must secure, before using or employing such materials, the assent in writing of the owner or licensee of such letters of patent, and file the same with the City of Rockville.

The Contractor will defend, at its own expense, and will pay the cost and damages awarded in any action brought against the City based on any allegation that the items provided by the Contractor infringe on a patent and copyright license or trade secret. Notwithstanding the foregoing, the city acknowledges and agrees that the contractor shall not have any obligation to defend the City for any alleged or actual or infringement, or any resulting litigation, based on (i) the City's use of any deliverables produced under the Agreement in a manner contrary to their intended use if the infringement would have been avoided by use of

such deliverables in accordance with their intended use, (ii) modification of the deliverables produced under the Agreement by any party other than the Contractor if the infringement would have been avoided without such modification, or (iii) the combination or use of the deliverables produced under the Agreement with materials or intellectual property not furnished by the Contractor if such infringement would have been avoided by use of such deliverables alone. In the event that an injunction shall be obtained against the City's use of items by reason of infringement of any patent, copyright, license or trade secret, the Contractor will, at its expense, procure for the City the right to continue using the items, replace or modify the same so that it becomes non-infringing.

34. **MISCELLANEOUS PROVISIONS** The City and the contractor each bind themselves, their partners, successors, assign and legal representatives of such other parties in respect to all covenants, agreements, and obligations contained in the contract document. Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the contractor assign any monies due or to become due hereunder without the previous written consent of the City. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended if delivered or sent by registered or certified mail to the last known address.

Duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of the duties, obligations, rights and remedies otherwise imposed or available by law, unless so indicated.

The contractor shall not be permitted to do any work which will require the services of any City employee on City holidays, Saturday or Sunday unless authorized by the appropriate City supervisor.

35. **ETHICS REQUIREMENTS** In accordance with the City's financial disclosure and ethical conduct policy and/or ordinances a prerequisite for payment pursuant to the terms of this contract is that the Contractor may be required to furnish explicit statements, under oath, that the City Manager, and/or any other officer, agent, and/or employee of the City, and any member of the governing body of the City of Rockville or any member or employee of a Commission, Board, or Corporation controlled or appointed by the City Council, Rockville, Maryland has not received or has not been promised directly or indirectly any financial benefit by way of fee, commission, finder's fee, or in any other manner, remuneration arising from directly or indirectly related to this contract, and that upon request by the City Manager, or other authorized agent, as a prerequisite to payment pursuant to the terms of this contract, the Contractor will furnish to the Mayor and Council of the City of Rockville, under oath, answers to any interrogatories to a possible conflict of interest has herein embodied.

36. **BROKERING** The Contractor warrants that only an established commercial or selling agency

maintained by the Contractor for the purpose of securing business may be retained to solicit or secure this contract. Any brokerage arrangements must be disclosed in the proposal. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City.

37. **EQUAL EMPLOYMENT OPPORTUNITY** The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, or disability. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices (provided by the City) setting forth the provisions of this nondiscrimination clause.

If the contractor fails to comply with nondiscrimination clauses of this contract or fails to include such contract provisions in all subcontracts, this contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further contracts with the City of Rockville.

Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the contractor will permit access to the contractor's books, records and accounts. If the City Manager concludes that the contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

38. **ASSIGNMENT** Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the City.
39. **INSURANCE** Prior to the execution of the contract, the Contractor must obtain at their expense and keep in force and effect during the term of the contract including all extensions, the insurance specified below, with an insurance company licensed or qualified to do business in the State of and. The Contractor must submit to the Purchasing Division a certificate of insurance prior to the start of any work. The certificate must show the quotation number and name of the project.

Except for Professional Liability Insurance, the Mayor and Council, City of Rockville must be named as an additional insured on all liability policies.

The insurer will endeavor to provide thirty (30) days written notice to the City of cancellation or material

**CITY OF ROCKVILLE
ROCKVILLE, MARYLAND**

**REQUEST FOR PROPOSAL #29-06
PENSION FUND INVESTMENT PERFORMANCE EVALUATION AND
CONSULTING SERVICES**

Scaled proposals addressed to the City of Rockville, Maryland for **PENSION FUND INVESTMENT PERFORMANCE EVALUATION AND CONSULTING SERVICES** will be received at the Purchasing Office, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850 until 2PM, FRIDAY, JANUARY 20, 2006.

The bidder assumes full responsibility for the timely delivery of the proposal to the designated location. Proposals delivered to any other office or location will not be considered.

DOCUMENTS

The proposal documents are available several ways:

By downloading the document from the City website at
<http://www.rockvillemd.gov> Click on bids and proposals.

Call the Purchasing Division at (240) 314-8430 and we will mail the RFP to you, or

You may visit the Purchasing Division and pick up a bid or proposal packet between the hours of 8:30 a.m. – 5:00 p.m., Monday through Friday, excluding government holidays. We are located at Rockville City Hall, 111 Maryland Avenue, Rockville, MD 20850. Call (240) 314-5048 for directions.

RECEIPT AND HANDLING OF PROPOSALS

The offeror assumes full responsibility for the timely delivery of the proposal to the designated location. Proposals delivered to any other office or location will not be considered. In accordance with Chapter 17 of the City's Purchasing Ordinance, competitive sealed proposals are not publicly opened or otherwise handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the evaluation process. The proposals, except for information identified by the offeror as proprietary, shall be open for public inspection after contract award.

AWARD

Award will be made to the qualified bidder obtaining the highest weighted score combining the price and technical specifications.

AGREEMENT

The successful contractor shall be required to complete a two-party standard form of agreement (sample attached). No change to the agreement form will be considered.

NOTICE TO BIDDERS

Companies not incorporated in the State of Maryland must be in compliance with the State of Maryland Code of Regulations Title 21, State Procurement Regulations in order to enter into a contract with the City. "Pursuant to 7-201 et seq of the Corporations and Associations Article the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, MD 21201 before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation."

Bidders must supply with their bids their US Treasury Department Employers' Identification Number as such number is shown on their Employer's Quarterly Federal Tax Return (US Treasury Department form No. 941).

Bidders must be qualified to bid in the state in accordance with Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland which ordains that any person convicted of bribery (upon acts committed after July 1, 1977) in furtherance of obtaining a contract from the State or any subdivision of the State of Maryland shall be disqualified from entering into a contract with the City. Companies located outside Maryland should call 1-410-767-1006, or e-mail: charterhelp@dat.state.md.us.

THE CITY RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS IN PART OR FULL AND TO WAIVE ANY TECHNICALITIES OR INFORMALITIES AS MAY BEST SERVE THE INTEREST OF THE CITY.

ANY INDIVIDUALS WITH DISABILITIES WHO WOULD LIKE TO RECEIVE THE INFORMATION IN THIS DOCUMENT IN ANOTHER FORM MAY CONTACT THE ADA COORDINATOR AT (240) 314-8100; TDD (240) 314-8137.

SPECIFICATIONS

INTRODUCTION

The City of Rockville invites qualified firms to submit proposals to provide Pension Fund Investment Performance Evaluation and Consulting Services for the City of Rockville Pension Plan. A proposal for the following services is requested:

- Quarterly evaluation of investment manager performance.
- Consulting services on appropriate investment policy guidelines, goals, and appropriate asset allocation for pension plan assets.
- Consulting services for investment manager/plan administrator.
- Other consulting services as requested and recommendations on "best practices" for retirement plan sponsors.
- Fund evaluation review to determine the appropriate number and variety of funds for the plan.

DESCRIPTION OF THE CITY OF ROCKVILLE PENSION PLAN

The City of Rockville is the second largest City in the State of Maryland with a population of approximately 57,600 and an annual combined fund budget for FY2006 in excess of \$89,000,000.

The Principal Mutual Life Insurance Company is the administrator of the single-employer defined benefit plan and defined contribution plan Public Employee Retirement System (PERS) established and administered by the City of Rockville. Plan assets at September 30, 2005 totaled \$64.6mil.

Plan Description

The Pension Plan has a defined benefit option and a defined contribution option.

Defined Benefit Option

This option is available to police employees, which participate 100 percent in the defined benefit option regardless of the date of employment and non-police employees who were members of the plan as of April 14, 1986. All benefits vest after ten years of credited service. An employee who retires at age 60 or a police employee with the completion of 25 years of credited service regardless of age is entitled to an annual retirement benefit, payable monthly for life (120 payments are guaranteed), for union employees in an amount equal to 1.8 percent of his/her final average salary, for each year of credited service, for administrative personnel in an amount equal to 1.8 percent before April 1, 1996, and 2.0 percent on or after April 1, 1996, of his/her final average salary, for each year of credited service and for police personnel in an amount equal to the lesser of (a) 2.0 percent of his/her final average earnings multiplied by his/her years of credited service, and (b) 60 percent of his/her final average earnings. Final average salary for administrative personnel and union employees is computed as the average earnings over three consecutive years within the last ten years of service which produces the highest average and for police employees the average annual earnings is computed as the average annual earnings during the final 60 months of employment with the City.

Covered police and pre-1986 non-police employees are required by statute to contribute a certain percent (4.2 percent for union, 5.2 percent for administrative and 8.5 percent for police) of their salaries to the plan. If an employee leaves covered employment or dies before 10 years of credited service (based upon a graduated vesting schedule of 50 percent after five years, up to 100 percent after 10 years of credited service), accumulated employee contributions plus credited interest thereon at the rate of 6 percent and a portion of the City's contribution (City contributions are deemed to be 150 percent of the employees contributions plus credited interest) are paid to the employee or designated beneficiary.

This option is also available to full-time, permanent, non-police employees hired on or after April 15, 1986. These employees are also covered by the defined contribution option described below. Employees are required to participate from the date of employment. Union employees are covered for an annual benefit equal to 1 percent of average salary and administrative personnel are covered for an annual benefit equal to 1.0 percent before April 1, 1996, and 1.2 percent on or after April 1, 1996, of average salary (as previously defined) for each year of credited service. Administrative personnel are required by statute to contribute 1 percent of their salaries to the plan starting April 1, 1996. Employees are vested 100% after 10 years of service.

Defined Contribution Option

Full-time, permanent non-police employees hired on or after April 15, 1986, are required to participate in this option from the date of employment. The plan allows contributions up to a maximum of 5 percent of earnings. The employee contributions are matched \$.50 by the City for each \$1 contributed by the employee. The employee is fully vested in his/her employee contributions and investment earnings thereon. The City's contribution for each employee (City's contributions and investment earnings thereon) is partially vested after three years and fully vested after seven years of credited service. Employees attaining the age of 60 become fully vested regardless of the number of years of credited service.

Membership in the Plans consisted of the following at April 1, 2005, the date of the latest actuarial valuation.

	DB	DC
Retirees and beneficiaries receiving payments	135	
Terminated plan members entitled to but not yet receiving payments	145	
Active plan members	103	397
Total	383	397

SCOPE OF SERVICES TO BE PROVIDED

The City of Rockville expects the consultant selected through this RFP to provide independent, objective and proactive input to the City and the Retirement Board's decision making processes.

Requested Services Relating to Evaluation of Investment Manager Performance

Quarterly written reports are to be provided to Director of Finance. An oral briefing is to be provided to the Retirement Board or to City staff. The Board customarily does not meet more than two times a year.

Reports shall be provided within 30 days of quarter end. The report provided to the City should contain information that is typical or standard for such reports provided to the firm's other pension fund evaluation clients. At a minimum, the report should provide the following:

- Summary statistical information on the market value of assets and asset allocation.
- Information on how each asset class and each manager is performing compared to appropriate performance benchmarks.
- An indication of whether the manager is meeting the Retirement Board's goals and adhering to investment guidelines.

Requested Services Relating to Development and Review of Investment Policy Guidelines, Goals and Appropriate Asset Allocation for Pension Plan Assets

Assets in the Defined Benefit portion of the Plan are currently invested as follows:

- 40% in fixed income Bond and Mortgage Fund
- 50% in US equity market
- 10% in international equity market

The selected firm should be prepared to act as consultant in the development of a comprehensive written statement of Investment Policy Guidelines and Goals. In developing a statement, consideration should be given to: the role of active versus passive management; available management styles; and the advisability of altering management structures under differing market conditions.

The consultant will be asked to periodically review the Investment Policy and recommend changes, if appropriate.

Requested Services Relating to Investment Manager/Plan Administrator

Services to be provided shall include:

- A recommendation on the appropriate structure for investment of the Retirement Plan's assets, including the use of one or more investment managers, an administrator and/or a custodian.
- Analysis leading to identification of appropriate investment styles consistent with the Retirement Board's long-term investment objectives.
- Assisting the City in negotiating with investment managers/fund administrator.
- Reviewing and recommending reporting requirements.

Requested Services Relating to Other Consulting and Assistance

- Assist staff and board with fiduciary education and adoption of pension-related best practices. Keep the plan abreast of new developments in investment management

techniques by making available ongoing research, topical papers, and memoranda on current issues of interest to institutional investors.

Fund evaluation review to determine the appropriate number and variety of funds for the plan.

- Assist staff with a specific review and evaluation of number and mix of funds for the Defined Contribution Plan.

REQUIRED CONTENTS AND FORMAT OF PROPOSALS

General Instructions

The overall organization and content of proposals submitted in response to this Request for Proposal (RFP) shall be as specified in these instructions. Proposals that do not conform to these instructions may receive unfavorable consideration.

Proposal Identification

The proposal shall be prominently identified with the City proposal number, submittal date and name and address of your company. Your company name should appear on each page of your proposal.

Indexing

The proposal shall contain a table of contents. The table of contents shall identify sections and major paragraph by number and page number and be identified to the specific RFP item or items to which they are responsive.

1.0 General Information

- 1.1 Name of firm, address, telephone and fax number of firm representative.

Provide a brief history of your firm and its operations. Include the year formed, ownership, structure, biographies of the principals, and ownership changes in the last five years.

- 1.2 Explain how the firm controls the quality of service provided to clients. What is the maximum number of clients per consultant that you maintain?

- 1.3 Names and resumes of personnel who will be responsible for this engagement. Specify the anticipated role and scope of involvement of each individual in this engagement.

- 1.4 List of all pension fund evaluation clients served by the personnel listed in response to above, including contact reference name, phone number, and approximate fund size. Indicate type of service provided to each i.e., evaluation, manager search, and investment guidelines.

- 1.5 Statement that the firm can provide all services as requested, or alternatively, a statement taking exception to certain services which cannot be provided as requested.

1.6 Provide a list of clients lost and gained during the past three years. List size of the fund and reason for ending the relationship. May we contact these accounts? If so, please provide address, telephone number, and name and title of responsible persons.

1.7 Indicate if your firm is registered with the Securities and Exchange Commission. If so, provide a complete copy of your A.D.V. Form Part II or such other form that may disclose similar information.

1.8 Provide information on how the fee for the following services will be determined:

- Evaluation of manager performance.
- Establishment of investment guideline, goals and asset allocation.
- Manager search.
- Other services or assistance.

Provide an estimated fee for each service on an annual basis. Fees will be paid in "hard" dollars. However, for respondents which are brokerage firms, they should state the percentage, if any, of fully discounted commissions which could be available for credit against the "hard" dollar fee. Firms may submit proposals that separate fees for multi-year retainer from extra initial services and special projects.

Each proposed price shall include any requested provision for price increases in future years and should include all travel and other expenses.

2.0 General Disclosures

2.1 List all services your firm, its principals or any affiliate provide that generate revenues for the firm and indicate the applicable percent of your firm's total revenue during the past three years from the following sources:

- Consulting with Plan Sponsors
- Money management activities
- Services to money managers

2.2 Does your firm, its principals or any affiliate, own any part of a money management firm, broker-dealer or other organization that sells services to institutional investors and/or SEC registered investment advisors? If so, identify the firms and describe the relationship.

2.3 Has your firm, its principals or any affiliate ever (1) been the focus of a non-routine Securities and Exchange Commission inquiry or investigation or a similar inquiry or investigation from any similar federal, state or self-regulatory body or organization, (2) been a party to any litigation concerning fiduciary responsibility or other investment related matters, (3) submitted a claim to your errors and omissions, fiduciary liability, and/or fidelity bond insurance carriers? If yes to any, please provide details.

2.4 List all money management firms from which your firm, its principals or any affiliates receive compensation. Identify these revenue sources as client directed, payment for services, and/or revenues not related to a letter of direction or specific services.

3.0 Information Regarding Evaluation of Investment Manager Performance

3.1 Provide a complete sample report that illustrates the type of information and format of quarterly reports that will be provided to the City.

3.2 Indicate the amount of flexibility available in your reporting format.

3.3 Provide a discussion of your general approach, philosophy, capabilities, and experience in providing performance evaluation services.

3.4 Describe your universe of money manager performance data. How often are managers in your database visited, reviewed, and their data updated?

3.5 Describe in detail the performance measurement database you utilize. Include number of funds, segments available, source of data, number of public funds, average and median plan size. Provide information on style analysis and how it is developed.

4.0 Information Regarding Establishment and Review of Investment Policy Guidelines, Goals and Appropriate Asset Allocation for Pension Plan Assets

4.1 Provide a sample of a recommended investment policy.

4.2 Provide a discussion of your general approach, philosophy, capabilities, and experience in providing consulting services for the establishment of investment guidelines, goals and asset allocation studies.

4.3 Describe what you see as your role in the area of general guidance and direction to staff and the Retirement Board.

5.0 Information Regarding Investment Manager/Pension Plan Administrator Services

5.1 Provide a discussion of your general approach, philosophy, capabilities and Experience in providing Investment Manager/Plan administrator consulting services.

6.0 Exceptions

6.1 All exceptions taken to the specifications contained in this document must be clearly indicated in the proposal. Unless noted as an exception, the bidder will be held responsible for providing each component or standard called for.

The City Manager retains the exclusive right to approve or reject any exception taken by the Bidder, the rejection of the Bid will be final and no further action may be taken.

7.0 Additional Information

7.1 Proposals may include any other information about your firm which you believe would be relevant to the City's selection of its investment consultant.

8.0 Affidavit

8.1 Submit completed Affidavit (form enclosed).

SUBMISSION OF PROPOSALS

One original and four (4) copies of the proposal shall be submitted to:

Eileen Morris, Contracts Officer
Purchasing Office
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

The City expects to award the contract according to the following schedule:

December 23, 2005	Issue RFP
January 20, 2006	Due Date for Proposal
Mid-February 2006	Award of Contract

Services will commence immediately after the award. The first tasks, which will need to be completed within the first month after the award, will be to meet with the City and Plan administrator to discuss appropriate structure for the administration of the Plan and the investment of the Plan's assets.

AWARD CRITERIA

Respondents must be significantly engaged in pension investment services and must have been actively involved in this field for a period of no less than five years. Respondents may not be currently providing actuarial services to the City of Rockville Pension Plan.

The evaluation of proposals will be based on:

- Quality and completeness of the consultant's work plan. 20%
 - Qualifications and technical competence of the firm and of the proposed personnel. 25%
 - Experience and past performance of the firm and its proposed personnel on local governmental pension plans of similar or greater size and complexity, including such factors as quality of work, control of costs, and ability to meet schedule. 25%
 - Quality of data processing and analytical systems necessary to support the work plan. 15%
 - Cost of the services. 15%
- The quality of the service is the paramount consideration; the City is seeking a high quality service performed in a cost-effective manner.

Respondents will be evaluated initially on the basis of the written proposals received. Further evaluations may include an oral presentation by those firms deemed most responsive to the RFP. Oral interviews, if required, will be held towards the end of January or beginning of February.

CONTRACT TERM

The contract shall be for a period of five years, with the option to renew for two additional one-year periods, subject to the annual review of the Director of Finance, the satisfactory performance of the offeror, the concurrence of the Rockville City Council and the annual availability of an appropriation. The City reserves the right to terminate the contract, for its convenience, by giving the firm 30 days written notice. The firm will be paid for its services through the effective date of termination.

The City may, at any time during the contract period, make changes within the general scope of the contract and its technical provisions. If such change causes any increase or decrease in the firm's cost of performance, an adjustment will be made in contract price, or in time allowed for performance, or both, and a written memorandum of such adjustment shall be made. Any claims by the firm for such an adjustment must be made in writing prior to proceeding with the service for which an adjustment is requested. Nothing in this clause shall excuse the firm from proceeding with performance of this contract in accordance with its original terms and conditions and any approved changes.

PROJECT STAFF

The City will, throughout the Contract Term, and any renewal term, have the right to reasonable rejection and approval of staff or subcontractors assigned to the project by the

Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be solely the responsibility of the Contractor.

CONTACT INFORMATION

Contractual questions shall be referred to Ms. Eileen Morris, Contract Officer,
(240) 314-8432.

Technical questions should be addressed to Mr. Gavin Cohen, Director of Finance
(240) 314-8402.



**CITY OF ROCKVILLE
MARYLAND
GENERAL CONDITIONS AND
INSTRUCTIONS TO BIDDERS
(PROPOSAL 4/04)**

1. **PREPARATION** All bids are to be submitted in a sealed envelope to the Purchasing Office marked with the bid number.

Conditional bids and bids containing escalator clauses will not be accepted. Bids must contain an original signature, in the space provided, of an individual authorized to bind the bidder.

2. **LATE BIDS** It is the bidder's responsibility to assure delivery of the bid at the proper time to the designated location. Bids delivered to any other office or location will not be considered.
3. **BID AWARD** The award will be made to the offeror whose proposal, in the opinion of the City is the best taking into consideration all aspects of the offeror's responses, including total net cost to the City. In the event that the offeror to whom the award is made does not execute a contract within 15 days from receipt of the contract, the City may give notice to such offeror of intent to award the contract to the next most qualified offeror, or to call for new proposals.
4. **ADDENDA** All addenda issued after the Request for Quotations and before the due date of the quotation shall become part of the contract. Bidders are required to acknowledge the addenda by one of the following methods; it is the responsibility of the vendor to make inquiry as to addenda issued:
 - Return a copy of the addenda with the bid
 - Initial in person at City Hall receipt of the addenda
5. **ACCEPTANCE/REJECTION OF BIDS** The City reserves the right to reject any or all bids in part or full and to waive any technicalities or informalities as may best serve the interests of the City. The City will accept or reject bids within one hundred and twenty (120) days after the bid due date. Bids may not be withdrawn during that period.
6. **MULTI-YEAR BIDS** Multi-year contracts may be continued each fiscal year only after funding appropriations have been granted. In the event necessary funding appropriation is not granted, the multi year contract shall be null and void, effective July 1st of the affected year.

7. **ERRORS IN BIDS** When an error is made in extending total prices the unit bid price will govern. Erasures in bids must be initiated by the bidder. Carelessness in quoting prices or in preparation of bid will not relieve the bidder from performing the contract.
8. **BID WITHDRAWAL** Requests for withdrawal of bids prior to bid opening shall be transmitted to the contract officer in writing.
9. **MISTAKES** Bidders are expected to be thoroughly familiar with all bid documents, including all addenda. No consideration will be granted for any alleged misunderstanding of the intent of the specifications. Each bidder shall carefully and thoroughly examine these bid documents for completeness. No claim of any bidder will be allowed on the basis that these bid documents are incomplete.
10. **INTEREST IN MORE THAN ONE BID AND COLLUSION** Multiple bids received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for a solicitation both as a bidder and as a subcontractor for another bidder, will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.
11. **TERMS AND CONDITIONS** The terms and conditions of this document govern in event of conflict with any terms of the bidder's proposal, and are not subject to change by reasons of written or verbal statement by the contractor unless accepted in writing. Words and abbreviations which have well known technical or trade meanings are used in accordance with such meanings.
12. **EXECUTION OF CONTRACT** The Contractor shall be required to execute a formal agreement with the City within fifteen days from the award. A sample of the agreement is attached. No revisions to the agreement will be allowed.
13. **PRINCIPAL PERSONNEL** Principal or key personnel included in the proposal may not be substituted without written approval of the City of Rockville. Replacements for key personnel under the contract must have equivalent professional qualifications and experience as those individuals listed in the proposal. The Consultant must submit written professional qualifications and experience for approval within ten working days prior to replacement.

14. **PRICE ADJUSTMENTS (CPI)** Unless otherwise stated in the bid document, rates quoted are to be firm for two (2) years after award of a contract. These rates will apply to additional work, change orders and contract modifications. A request for price adjustment after the 2 year period is subject to approval or rejection by the Contract Officer. The Consultant shall submit to the Contract Officer sufficient justification to support the Consultant's request.

A request for price adjustment may not be approved which exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately prior to the date of the request.

15. **INTERPRETATION** Any questions concerning conditions and specification shall be directed in writing to the Purchasing Office. The submission of a bid shall be prima facie evidence that bidder thoroughly understands the terms of the specification. The contractor shall take no advantage of any error or omission in the specifications.

16. **DELIVERY** All time limits stated in the contract documents are of the essence. The contractor shall expedite the work and achieve substantial completion within the contract time. If time limits are not specified, state the number of days required to make delivery/completion in the space provided. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the contractor, notwithstanding that such materials/workmanship have been previously overlooked and accepted.

17. **PAYMENT** Payment will be made monthly upon receipt of an accepted invoice for work done which is reasonable and allocable to the Agreement and which has been performed to the satisfaction of the City.

Invoices should be submitted in duplicate to:
City of Rockville
Attn: Accounts Payable
111 Maryland Avenue
Rockville, Maryland 20850

All invoices must reference a Purchase Order Number.

Payment will be made upon acceptable inspection and/or testing of all items for compliance with specifications and in satisfactory condition. Should inspection delays occur, the contractor shall have thereby no claim for damages or extra compensation. Discounts shall be applicable from the date of acceptance of the materials rather than the date of the invoice.

18. **DELAYS/EXTENSION OF TIME** If the contractor is delayed in the delivery of the supplies, equipment or services by any act or neglect of the City or by a separate contractor employed by the City, or by any

changes, strikes, lockouts, fires, unusual delays in transportation or delay authorized by the City, the City shall review the cause of such delay and shall make an extension if warranted.

All claims for extensions must be a written notice sent to the Contract Officer within ten (10) calendar days after the date when such alleged cause for extension of time occurred. All such claims shall state specifically the amount of the delay the contractor believes to have suffered. If statement is not received within the prescribed time the claim shall be forfeited and invalidated.

19. **TERMINATION FOR DEFAULT** The contract may be cancelled or annulled by the City in whole or in part by written notice of default to the Contractor upon nonperformance or violation of contract terms and an award made to next low Bidder, or, articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Contractor (or his surety) shall be liable to the City for costs to the City in excess of the defaulted contract prices: provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

20. **TERMINATION FOR CONVENIENCE** The performance of work or services under this contract may be terminated in whole or part, upon thirty (30) calendar days written notice when the City determines that such termination is in its best interest. The City shall be liable only for those goods and services furnished prior to the effective date of such termination.

21. **CHANGES** The City, without invalidating the contract, may order written changes in the work consisting of additions, deletions or modification with the contract sum and time being adjusted accordingly. All such changes shall be made in writing by the Contract Officer.

Costs shall be limited to the following: cost of materials, cost of labor and additional costs of supervision and field office personnel directly attributable to the change.

The cost or credit to the City from a change in the work shall be determined by mutual agreement. The contractor shall do all work that may be required to complete the work contemplated at the unit prices or lump sum to be agreed upon.

No alterations or variables in the terms of the contract shall be valid or binding upon the City unless made in writing and signed by the City.

22. **EXTRA COSTS** If the contractor claims that any instructions by drawings or otherwise involve extra cost or extension of time, a written request must be submitted to the Project Manager within ten (10) calendar days after receipt of such instructions and before proceeding to execute the work, stating in

detail the basis for objection. No such claim will be considered unless so made.

Any discrepancies which may be discovered between actual conditions and those represented by the specifications and/or drawings shall be reported to the City and work shall not proceed, until written instruction has been received by the contractor from the City. On drawings the figured dimensions shall govern in the case of discrepancy between the scales and figures.

Anything shown on applicable plans and not mentioned in the specifications or mentioned in the specifications and not shown on the plans have the same effect as if shown or mentioned respectively on both.

23. **GUARANTEE** All guarantees and warranties required shall be furnished by the contractor and shall be delivered to the Contract Manager before final payment is made.

The contractor guarantees that the items conform to the design and specifications and to drawings, samples or other descriptions referred to in this document. The contractor further guarantees the items will be free from defects in materials and workmanship, latent or patent and are suitable for the intended purpose as far as the contractor knows or has reason to know. The guarantee contained herein shall remain in full force and effect for a minimum of one year after initial delivery to the City unless another effective period is specified.

24. **DEFECTIVE SUPPLIES/SERVICE** Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the contractor.

If the work shall be found to be defective or to have been damaged, before final acceptance, the contractor shall make good such defect in a manner satisfactory to the City, without extra compensation even though said defect or injury may have not been due to any act or neglect of the contractor.

25. **LEGAL REQUIREMENTS** All materials, equipment, supplies and services shall conform to applicable Federal and State laws and regulations. The contractor shall observe and comply with all Federal, State, County and local laws and ordinances that affect the work to be done. The provisions of this contract shall be governed by the law of the State of Maryland.

26. **SUBCONTRACTING** When allowed, bidders who intend to subcontract any portion of the work including delivery, installation or maintenance will submit to the City prior to the start of work: 1) a description of the items to be subcontracted, 2) all subcontractor names, addresses and telephone numbers and 3) the nature and extent of the work utilized during the life of the contract.

This does not relieve the contractor from the prime responsibility of full and complete performance

under the contract. There shall be no contractual relationship between the City and any subcontractor.

27. **RESERVATIONS** The City reserves the right to add or delete any item(s) from the bid in whole or in part at the City's discretion without affecting the bid prices for any item or remaining work. Unit prices submitted in the bid shall not be increased or decreased regardless of changes in quantity.

The City may waive minor differences in specifications in bids provided these differences do not violate the specifications' intent nor materially affect the operation for which the items are being purchased.

28. **AUTHORITY OF THE CITY MANAGER IN DISPUTES** Except as may otherwise be provided by the final agreement, any dispute concerning a question of fact arising under the agreement signed by the City and the contractor which is not disposed of by the final agreement shall be decided by the City Manager who shall notify the contractor in writing of his determination. The contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim. Pending final decision of the dispute herein, the contractor shall proceed diligently with performance under the agreement signed by the City and the contractor. The decision of the City Manager shall be final and conclusive unless an appeal is taken pursuant to City Purchasing Ordinance.

29. **INDEMNIFICATION OF THE COUNCIL** The contractor shall indemnify and save harmless the Mayor and Council from all suits, actions and damages or costs, of every name and description to which the Council may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on part of the contractor, or subcontractors or agents of the contractor.

30. **NO LIMITATION OF LIABILITY** The mention of any specific duty or liability of the contractor in any part of the of specification shall not be construed as a limitation or restriction upon any general liability or duty imposed upon the contractor.

31. **PROPRIETARY INFORMATION** The City agrees, to the extent permitted by law, to hold all material and information belonging to the offeror, which it deems to be confidential, in strictest confidence. The Contractor agrees to hold all material and information belonging to the City or the City's agents in strictest confidence and not to make use thereof other than for the performance of contractual obligations, to release it only to employees requiring such information. Reasonable precautions will be exercised for the protection of any proprietary data included in the proposal.

32. **RELEASE OF INFORMATION** During the term of the final agreement, the successful Contractor shall not release any information related to the services or the performance of the services under the

agreement nor publish any final reports or documents without the prior written approval of the City.

33. **PATENTS AND ROYALTIES** Whenever any article, material, appliance, process composition, means or things called for by these specifications is covered by Letter of Patent, the successful bidder must secure, before using or employing such materials, the assent in writing of the owner or licensee of such letters of patent, and file the same with the City of Rockville.

The Contractor will defend, at its own expense, and will pay the cost and damages awarded in any action brought against the City based on any allegation that the items provided by the Contractor infringe on a patent and copyright license or trade secret. In the event that an injunction shall be obtained against the City's use of items by reason of infringement of any patent, copyright, license or trade secret, the Contractor will, at its expense, procure for the City the right to continue using the items, replace or modify the same so that it becomes non-infringing.

34. **MISCELLANEOUS PROVISIONS** The City and the contractor each bind themselves, their partners, successors, assign and legal representatives of such other parties in respect to all covenants, agreements, and obligations contained in the contract document. Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the contractor assign any monies due or to become due hereunder without the previous written consent of the City. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended if delivered or sent by registered or certified mail to the last known address.

Duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of the duties, obligations, rights and remedies otherwise imposed or available by law, unless so indicated.

The contractor shall not be permitted to do any work which will require the services of any City employee on City holidays, Saturday or Sunday unless authorized by the appropriate City supervisor.

35. **ETHICS REQUIREMENTS** In accordance with the City's financial disclosure and ethical conduct policy and/or ordinances a prerequisite for payment pursuant to the terms of this contract is that the Contractor may be required to furnish explicit statements, under oath, that the City Manager, and/or any other officer, agent, and/or employee of the City, and any member of the governing body of the City of Rockville or any member or employee of a Commission, Board, or Corporation controlled or appointed by the City Council, Rockville, Maryland

has not received or has not been promised directly or indirectly any financial benefit by way of fee, commission, finder's fee, or in any other manner, remuneration arising from directly or indirectly related to this contract, and that upon request by the City Manager, or other authorized agent, as a prerequisite to payment pursuant to the terms of this contract, the Contractor will furnish to the Mayor and Council of the City of Rockville, under oath, answers to any interrogatories to a possible conflict of interest has herein embodied.

36. **BROKERING** The Contractor warrants that only an established commercial or selling agency maintained by the Contractor for the purpose of securing business may be retained to solicit or secure this contract. Any brokerage arrangements must be disclosed in the proposal. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City.

37. **EQUAL EMPLOYMENT OPPORTUNITY** The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, or disability. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices (provided by the City) setting forth the provisions of this nondiscrimination clause.

If the contractor fails to comply with nondiscrimination clauses of this contract or fails to include such contract provisions in all subcontracts, this contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further contracts with the City of Rockville.

Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the contractor will permit access to the contractor's books, records and accounts. If the City Manager concludes that the contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

38. **LANGUAGE** If applicable, the contractor shall appoint one or more crew members or supervisors to act as liaison with the City and emergency service personnel. All liaisons shall be fluently bilingual in English and the contractor's employees'

language(s), and at least one liaison shall be present at each work site at all times when any of the contractor's employees or agents are at the site.

39. **ASSIGNMENT** Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the City.

40. **INSURANCE** Prior to the execution of the contract, the Contractor must obtain at their expense and keep in force and effect during the term of the contract including all extensions, the insurance specified below, with an insurance company licensed or qualified to do business in the State of and. The Contractor must submit to the Purchasing division a certificate of insurance prior to the start of any work. The certificate must show the quotation number and name of the project. The Mayor and Council, City of Rockville must be named as an additional insured on all liability policies. Sixty (60) days written notice to the City of cancellation or material change in the policy is required. In no event may the insurance coverage be less than shown below.

Unless otherwise described in this contract the successful contractor and subcontractors will be required to maintain for the life of the contract and to furnish the City evidence of insurance as follows:

Commercial General Liability Insurance

Bodily Injury \$1,000,000 each occurrence
Property Damage \$500,000 each occurrence

Blanket Contractual Bodily Injury \$1,000,000 each occurrence
Coverage \$500,000 each occurrence
Property Damage \$500,000 each occurrence

Independent Contractor Bodily Injury \$1,000,000 each occurrence
Coverage \$500,000 each occurrence
Property Damage \$500,000 each occurrence

Personal Injury Coverage \$1,000,000 aggregate
(Sections A, B, and C)

Workman's Comp Insurance Section A – Statutory limits
State of Maryland
Section B – Employer's Liability
(\$500,000 each accident)

Comprehensive Automobile Liability Insurance

Bodily Injury \$500,000 each person
\$1,000,000 each occurrence

(Applicable to owned, non-owned and hired vehicles)

Property Damage \$500,000 each occurrence

Professional Liability Insurance

\$1,000,000 covering acts or omissions of the Contractor

The Contractor shall not commence any work under the Contract until a written Purchase Order is received from the Contract Officer

Alternative insurance requirements, when outlined under the special provisions of this contract, shall take precedence over the above requirements in part or in full as described therein.

AFFIDAVIT

I hereby affirm that:

I am the _____ and the duly authorized representative of the firm of _____
whose address is _____

and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

I further affirm:

AFFIDAVIT OF QUALIFICATION TO CONTRACT WITH A PUBLIC BODY

1. Except as described in Paragraph 2 below, neither I nor the above firm nor, to the best of my knowledge, any of its controlling stockholders, officers, directors, or partners, performing contracts with any public body (the State or any unit thereof, or any local governmental entity in the state, including any bi-county or multi-county entity), has:

A. been convicted under the laws of the State of Maryland, any other state, or the United States of any of the following:

- (1) bribery, attempted bribery, or conspiracy to bribe.
- (2) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract.
- (3) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property.
- (4) a criminal violation of an anti-trust statute.
- (5) a violation of the Racketeer Influenced and Corrupt Organization act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract.
- (6) a violation of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- (7) conspiracy to commit any of the foregoing.

B. pled nolo contendere to, or received probation before verdict for, a charge of any offense set forth in subsection A of this paragraph.

C. been found civilly liable under an anti-trust statute of the State of Maryland, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

D. during the course of an official investigation or other proceeding, admitted, in writing or under oath, an act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection A or C of this paragraph.

2. [State "none," or as appropriate, list any conviction, plea or admission as described in Paragraph 1 above, with the date, court, official or administrative body, the individuals involved and their position with the firm, and the sentence or disposition, if any]. _____

3. I further affirm that neither I nor the above firm shall knowingly enter into a contract with the Mayor and Council of Rockville under which a person or business debarred or suspended from contracting with a public body under Title 16

of the State Finance and Procurement Article of the Annotated Code of Maryland, will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

I acknowledge that this Affidavit is to be furnished to the Mayor and Council of Rockville and, where appropriate, to the State Board of Public Works and to the Attorney General. I acknowledge that I am executing this Affidavit in compliance with the provisions of Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland which provides that persons who have engaged in certain prohibited activity may be disqualified, either by operation in law or after a hearing, from entering into contracts with the Mayor and Council of Rockville. I further acknowledge that if the representations set forth in this Affidavit are not true and correct, the Mayor and Council of Rockville may terminate any contract awarded, and take any other appropriate action.

NON-COLLUSION AFFIDAVIT

1. Am fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;

2. Such bid is genuine and is not a collusive or sham bid

3. Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Mayor and Council of Rockville, Maryland (Local Public Agency) or any person interested in the proposed Contract; and

4. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

I do solemnly declare and affirm under the penalties of perjury that the contents of these affidavits are true and correct.

Signature and Title _____ Date _____

COMPLETE THIS FORM AND RETURN WITH YOUR BID PROPOSAL